

HOUSE BILL 3061
By Walley

AN ACT to amend Tennessee Code Annotated, Title 33, Chapter 2, Part 5, relative to the mental health and mental retardation licensure law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 2, Part 5, is amended by adding a new section, which reads:

(a) If the commissioner finds that a facility is providing mental health or mental retardation services without a license, the commissioner may, without prior notice, order the facility immediately to cease and desist from providing mental health or mental retardation services. The commissioner must find that entering the order is in the public interest; necessary for the protection of the health, safety, or welfare of the clients of the facility; and consistent with the purposes fairly intended by the Mental Health and Mental Retardation Licensure Law.

(b) The order must state the relevant findings of fact and conclusions of law that support the commissioner's finding that entering the order without prior notice is in the public interest, necessary for the protection of the clients of the facility, and consistent with the Mental Health and Mental Retardation Licensure Law. The order must provide notice to the respondent of his/her rights and responsibilities concerning review of the order.

(c) The owner of the facility ordered to cease and desist operation may seek review of the order before the commissioner or the commissioner's designee as set out below:

(i) The owner or legal representative of the facility may request an informal conference before the commissioner or the commissioner's designee. The request must be filed with the commissioner within thirty (30) days of entry of the order. The commissioner or his/her designee shall convene the requested informal conference within seven (7) days of the date of receipt of such request. The conference is informal and the facility has the right to be represented by counsel at all stages of the informal conference.

(ii) The sole issue to be determined at the informal conference is whether the facility was operating without a license as required by the Mental Health and Mental Retardation Licensure Law prior to or concurrently with the date of the entry of the order. The Mental Health and Mental Retardation Licensure Law, Title 33, Chapter 2, Part 5, and its rules, control this determination. At the conference the commissioner may uphold, amend, or rescind the cease and desist order. Unless contested under paragraph (iii), the original or amended cease and desist order becomes a final order within seven (7) days.

(iii) If the commissioner or the commissioner's designee determines, as a result of the informal conference, that the cease and desist order should be amended or should not be rescinded, the owner or legal representative of the facility may seek review of the order under title 4, chapter 5, part 3. The request must be made in writing to the commissioner within seven (7) days of receipt of written notice of the commissioner's decision. Upon receipt of the request, the commissioner shall immediately refer the matter to the department of state for initiation of contested case proceedings.

(iv) If the respondent fails to request an informal conference under paragraph (i), then the cease and desist order becomes a final order of the commissioner within thirty (30) days of its entry. The facility may obtain judicial review of this final order in the chancery court of Davidson County under title 4, chapter 5, part 3.

(d) It is a Class B misdemeanor to violate a cease and desist order lawfully entered by the commissioner. Each day of operation in violation of the commissioner's cease and desist order, calculated from the date of its service upon the owner or operator of the facility, is a separate offense.

(e) Nothing in this part precludes any person, including the department, who is aggrieved by the operation of an unlicensed facility from pursuing other remedies and sanctions, including those provided by Sections 33-2-505 and 33-2-508.

SECTION 2. This act shall take effect on July 1, 1996.

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